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Before the  
Federal Communications Commission  
Washington, D.C. 20554

FCC 04M-39

In the Matter of	)	EB Docket No. 04-381
	)	
Florida Cable Telecommunications	)	
Association, Inc.; Comcast Cablevision of	)	
Panama City, Inc.; Mediacom Southeast,	)	
L.L.C.; and Cox Communications Gulf,	)	
L.L.C.,	)	
	)	
Complainants,	)	
	)	
v.	)	
	)	
Gulf Power Company,	)	
	)	
Respondent.	)	

ORDER

Issued: November 30, 2004

Released: December 1, 2004

A Petition for Clarification ("Petition") was filed by Florida Cable Telecommunications Association, Inc., et al. ("Complainants") on October 20, 2004. In response, Gulf Power Company ("Respondent") filed a Motion to Strike Complainant's Petition for Clarification ("Motion to Strike") on November 4, 2004. Complainants Opposition to Respondent Gulf Power Company's Motion to Strike ("Opposition") was filed on November 10, 2004.

The Presiding Judge issued *Prehearing Order* FCC 04M-28, October 1, 2004. It recites the issue set for hearing which in its essence requires formal litigation on the appropriate amount of "compensation above marginal cost" for cable attachments of Complainants on the utility poles of Respondent. *Hearing Designation Order* (DA 04-3048), released September 27, 2004, Para. 11.<sup>1</sup> For an elucidation of methodology of proof before the first prehearing conference, the Presiding Judge required Complainants

<sup>1</sup> This is the concise issue. But Complainants contend in their Petition that there are ancillary issues of proof requiring Respondent to show "full pole capacity, combined with either (a) another attacher seeking pole space, or (b) the existence of a higher - valued use of the space through the utility's own operations."

and Respondent to submit Preliminary Statements on Alternative Cost Methodology ("Preliminary Statements") by a date that has been extended to December 3, 2004. In that way, a procedure was prescribed for assisting the parties in narrowing evidentiary issues.<sup>2</sup>

If the parties complete the task of preparing for the first prehearing conference in compliance with the *Prehearing Order*, the pending motions possibly could be narrowed, or rendered moot.

### Ruling

Accordingly, IT IS ORDERED that the aforementioned Petition for Clarification and Motion to Strike ARE DEFERRED *sine die* pending receipt on **December 3, 2004**, of the prescribed Preliminary Statements on Alternative Cost Methodology, and discussion at the Pretrial Conference now scheduled for **December 13, 2004**.<sup>3</sup>

FEDERAL COMMUNICATIONS COMMISSION<sup>4</sup>

A handwritten signature in black ink, reading "Richard L. Sippel". The signature is written in a cursive, flowing style.

Richard L. Sippel  
Chief Administrative Law Judge

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<sup>2</sup> All counsel appearing in this case should confer before the conference and try to reach as much common ground as possible.

<sup>3</sup> See *Order* FCC 04M-35, released October 21, 2004; and *Order* FCC 04M-38, released November 17, 2004.

<sup>4</sup> Courtesy copies of this *Order* were transmitted to counsel for each of the parties by e-mail on the date of issuance.